

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

**JONATHAN GREEN,**  
**Plaintiff**

v.

**TIMOTHY McCARTHY,**  
**Defendant**

**1:09-11705-NMG**

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**DEFENDANT TIMOTHY McCARTHY'S MOTION IN LIMINE FOR A SPECIAL  
PREMILINARY INSTRUCTION TO THE JURY**

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Defendant Timothy McCarthy (“Defendant”) moves *in limine*, and requests this Honorable Court for a special preliminary instruction to the jury that the underlying arrest was lawful. As grounds therefore, the Defendant states as follows:

1. Plaintiff brought a Section 1983 claim against the Defendant alleging that he violated his Fourth Amendment right to be free from unreasonable seizures by using excessive force against him during the course of his arrest on May 7, 2007. Plaintiff also has additional claims for assault and battery and intentional infliction of emotional distress.<sup>1</sup> As the lawfulness of the arrest has never been disputed, the Defendant requests that the Court give a preliminary instruction to the jury that the only issue for their determination is whether the amount of force used by the Defendant was reasonable and that the underlying arrest was lawful.

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<sup>1</sup> Defendant's summary judgment motion on Plaintiff's MCRA claim is currently pending.

2. A preliminary instruction will assist the jury in understanding the scope of Plaintiff's claim and will prevent confusion of the issues as the evidence is presented.

WHEREFORE, the Defendant requests this Honorable Court for a special preliminary instruction to the jury that the underlying arrest was lawful.

Respectfully submitted,  
DEFENDANT TIMOTHY McCARTHY

By his attorneys:

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#### **CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and to the non-registered participants via first class mail on February 19, 2013.

/s/ Michelle K. Hinkley  
Michelle K. Hinkley